IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07/02/2003

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THE HONOURABLE MR.JUSTICE P.D.DINAKARAN

W.P.No.36823 of 2002

Sri Swaminathan Constructions
a Registered Firm
State Bank Colony
Kumbakonam. .. Petitioner

-Vs-

1. The Divisional Engineer
National Highways
Thanjavur.

2. The Superintending Engineer
National Highways
11-A, Vinayagar Nagar
Madurai.

3. The Chief Engineer
National Highways
Chepauk
Chennai-600 005. .. Respondents

Petition under Article 226 of the Constitution of India for the issue of a writ of Mandamus as stated therein.

For petitioner : Mr.P.Rajagopal

For respondents : Mr.M.S.Palanisamy
Addl. Government Pleader

:ORDER

The petitioner, who submitted a tender for re-construction of a bridge at Kms. 5/6, Sembanarkoil - Nallodai Road across the Kadaladi river within the jurisdiction of the second respondent, was entrusted with the above-said contract by the respondents herein under an agreement dated 21.12.1999. The value of the contract as per the said agreement dated 21.12.1999 is Rs.92,13,377/- and the petitioner was expected to complete the work on or before 20.9.2000.

2. Concedingly, the petitioner-contractor completed the work in all respects on 25.2.2001, raised a final bill for a sum of Rs.6,17,374/- and also requested for refund of the security deposit, viz., a sum of Rs.1,38,268/-. As the said dues were not settled, the petitioner has preferred the above writ petition seeking the issue of writ of Mandamus directing the respondents to pay the petitioner all amounts due including the final bill and security deposit.

3. Mr.M.S.Palanisamy, learned Additional Government Pleader appearing for the respondents, placing reliance on the averments stated in the paragraph 8 of the counter affidavit filed on behalf of the respondents, has fairly stated that the final bill due to the petitionercontractor would be paid soon after the approval of the revised administrative sanction proposals by the Government. In paragraph 10 of the counter affidavit, the respondents have stated that the final payment of the work could be made to the petitioner-contractor only after the approval of the revised administrative sanction proposals by the Government. Therefore, the liability of the respondents to settle the final dues to the petitioner-contractor is not disputed at all.

4. Normally, it may not be proper for this Court to exercise the jurisdiction under Article 226 of the Constitution of India in matters of contractual liabilities, as the Court is expected to act in accordance with certain self-imposed restrictions.

5. It is a trait law that no writ would be issued in respect of the rights flowing under non-statutory contracts. However, if the action of the State is challenged on the ground of unreasonableness, unfairness and as one being against the public interest, it can be subjected to judicial review, which could be tested on the touch-stone of Article 14 of the Constitution of India. But in the absence of disputed questions of fact requiring adjudication, on detailed evidence, and when the claim made by one remains uncontested by another, as in the instant case, the Court is entitled to exercise its jurisdiction under Article 226 of the Constitution of India even in a matter of nonstatutory contract in order to strike out injustice and to reach justice, of course, subject to the self-imposed restrictions, as held by a Full Bench of the Kerala High Court in STATE OF KERALA V. T.N.ANIL reported in 2002 (3) CTC 449, following the ratio laid down by the Apex Court in:
(i) AIR INDIA STATUTORY CORPORATION V. UNITED LABOUR UNION reported in 1997 (9) SCC 377 : AIR 1997 SC 645;
(ii) HINDUSTAN PETROLEUM CORPORATION LTD. V. DOLLY DAS reported in 19 99 (4) SCC 450; and
(iii) LIFE INSURANCE CORPORATION V. SMT.ASHA GOEL reported in 2001 (2) SCC 160 : AIR 2001 SC 549.

6. Hence, applying the ratio laid down in the above canon of judgments, I am obliged to direct the respondents to get necessary orders from the Government for the revised administrative sanction to settle the dues to the petitioner within twelve weeks from the date of receipt of a copy of this order.

The writ petition is ordered accordingly.

Index: Yes
Internet: Yes

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